United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-2251

ORIGINAL

United States Court of Appeals

FOR THE SECOND CIRCUIT

STEPHEN D. MADDALONI,

Plaintiff-Appellant,

v.

LONG ISLAND RAIL ROAD, W. L. SCHLAGER, JR., LOCAL 808, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, M. GREENE and JOHN MAHONEY,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES, THE LONG ISLAND RAIL ROAD COMPANY AND WALTER L. SCHLAGER, JR.

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Issues

The issues presented by this appeal are:

1. Do any real issues exist which would vest subject matter jurisdiction in the federal courts under the Railway Labor Act?

2. Is plaintiff entitled to a finding in the Court of Appeals that due process was lacking after the District Court held a full evidentiary hearing and found that plaintiff had received due process?

Statement of the Case

The plaintiff, Stephen Maddaloni, was employed as a patrolman by the Long Island Rail Road, one of the defendants herein. Plaintiff was dismissed from service when, after a hearing, he was found guilty of misconduct sufficient to warrant such dismissal. After an appeal on the property was denied, the dispute was submitted to a Public Law Board for final and binding arbitration pursuant to a collectively bargained agreement under the Railway Labor Act and the provisions of § 3 of said Railway Labor Act (45 U.S.C. 153). The arbitrator's decision upheld the dismissal.

Plaintiff then commenced an action to review the decision of the Public Law Board against The Long Island Rail Road Company (hereinafter referred to as "Railroad"), Walter L. Schlager, Jr., its President, Local 808, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (hereinafter referred to as "Union"), and two of the Union's officers. The action was brought in the United States District Court for the Eastern District of New York and was heard by the Honorable John F. Dooling, Jr. Judge Dooling recognized the limited scope of review under the Railway Labor Act and, after a full evidentiary hearing on the issue of whether plaintiff was afforded due process before the arbitrator, granted the Railroad's motion for summary judgment. Judge Dooling found, as did the arbitrator, that the testimony of plaintiff Maddaloni was incredible (239, 240) and that he, indeed, did receive notice of the arbitration. The Court found that the Railroad was "in the clear" (245) and had fully complied with the procedural requirements of the Railway Labor Act (246). Judgment was signed and entered on May 16, 1974 (261).

The appeal is brought to review the judgment of the District Court granting Railroad's motion for summary judgment.

POINT I

The court lacks jurisdiction to review the decision of the Public Law Board.

Plaintiff brings this action as another attempt to obtain reinstatement after being displeased with the decision of the arbitrator. Since judicial review of arbitration is severely limited under the Railway Labor Act, plaintiff has created a spurious claim of lack of notice of the arbitration hearing in order to vest another forum with jurisdiction to hear his case. Judge Dooling held a full evidentiary hearing on this claim and found it to be without merit. The lower court then properly granted the Railroad's motion for summary judgment.

The Railway Labor Act contemplates that any dispute between employees and carriers be heard before a Special Board of Adjustment[1] and that the decision of such Board "shall be final and binding upon both parties to the dispute." 45 U.S.C. § 153 (Second).

A discharged employee who has taken his appeal to a Special Board of Adjustment under § 3 of the Railway Labor Act has no further rights under that Act, and the federal district courts are without jurisdiction to review the decision of the Board.

> *Stranford* v. *PRR,* 155 F. Supp. 680 (D.C.N.J. 1957);
>
> See also: *Russ* v. *Southern Ry. Co.,* 334 F. 2d 224 (6th Cir. 1964), *cert. den.* 379 U.S. 991, *reh. den.* 380 U.S. 938;
>
> *Barnett* v. *Penn-Reading Seashore Lines,* 245 F. 2d 579 (3rd Cir. 1957).

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[1] Commonly referred to in the industry as a "Public Law Board".

As was said in *Diamond* v. *Terminal Railway,* 421 F. 2d 228 (5th Cir. 1970), at page 233:

> "Under the Railway Labor Act, as amended in 1966, Public Law No. 89-456, 80 Stat 208, the range of judicial review in enforcement cases is among the narrowest known to the law. Board awards are 'final and binding' upon the parties. In court the findings and order of the Board are 'conclusive.' Judicial review of orders is limited to three specific grounds: (1) failure of the Board to comply with the Act, (2) fraud or corruption, or (3) failure of the order to conform, or confine itself, to matters within the Board's jurisdiction (citations omitted). Only upon one or more of these grounds may a court set aside an order of the Adjustment Board."

The basis for Maddaloni's complaint is his alleged wrongful discharge. This has already been finally adjudicated by the Adjustment Board. As the Supreme Court said in *Gunther* v. *San Diego & A.E.R. Co.,* 382 U.S. 257, 263 (1965),

> "The basic grievance here—that is, the complaint that petitioner has been wrongfully removed from active service as an engineer because of health—has been finally, completely, and irrevocably settled by the Adjustment Board's decision. Consequently, the merits of the wrongful removal issue as decided by the Adjustment Board must be accepted by the District Court."

In *Locomotive Engineers* v. *Louisville & Nashville R. Co.,* 373 U.S. 33 (1963), the Supreme Court said that prior decisions of the Court had made it clear that the Adjustment Board provisions were to be considered as "compulsory arbitration in this limited field," "the complete and final means for settling minor disputes," and "a

mandatory, exclusive, and comprehensive system for resolving grievance disputes."

In his complaint, plaintiff alleges that the proceedings before the Adjustment Board were conducted in such a manner as to deny the plaintiff due process. In *Rossa* v. *Flying Tiger Line, Inc.*, 187 F. Supp. 386, 392 (N.D. Ill. 1958), plaintiff alleged that:

> "he did not receive sufficient notice of the charges against him, that he did not have sufficient opportunity to obtain witnesses in his behalf, that he did not have sufficient opportunity to procure documentary evidence, that the defendant offered no evidence to support the charges against him, that he had no opportunity to cross examine any evidence or witnesses against him, that the defendant refused to make available to him its records and that he did not have sufficient time to prepare an adequate defense."

Yet, the court held that "plaintiff's allegations concerning the board's proceedings are not such as to warrant or afford jurisdiction to review what the System Board did." *Rossa*, 187 F. Supp. at 392.

Some courts have held, however, that the decision of an Adjustment Board is open to judicial review where due process was lacking. The cases uniformly state, though, that the denial of due process must occur through some conduct of the Adjustment Board. *Edwards* v. *St. Louis-San Francisco R.R. Co.*, 361 F. 2d 946 (7th Cir. 1966) and cases cited therein. In *D'Elia* v. *New York, New Haven & Hartford R. Co.*, 338 F. 2d 701, 702 (2d Cir. 1964), the court held that under the Railway Labor Act, a discharged employee

> "was entitled to a completely impartial hearing only when the case reached the referee designated to sit with the Board. As long as the final hearing officer was impartial, the requirements of due process were satisfied."

In *D'Elia*, as in the present case, there was no evidence of improper conduct by the arbitrator and the Second Circuit affirmed the granting of defendants' motion for summary judgment.

In an attempt to create another opportunity for reinstatement, plaintiff has raised a spurious claim of lack of due process. Plaintiff alleges that he received no notice of the arbitration hearing. The court below granted a full evidentiary hearing on this limited issue and found that the allegations of lack of notice were without substance. The court then concluded that there were no reviewable issues and granted Railroad's motion for summary judgment. The Court of Appeals should affirm this judgment.

POINT II

Plaintiff was afforded due process at the arbitration hearing.

The theory of plaintiff's action as stated in p. 3 of his Brief is that he had been denied due process at the arbitration hearing because he was not apprised of the hearing date and because the Union represented him without authority in submitting the matter to arbitration. Both of these claims were proven untrue at the hearing before Judge Dooling. After a full evidentiary hearing on the issue of lack of notice, Judge Dooling concluded:

> "However, I find it difficult to believe he (Maddaloni) had not received one or both of these letters of May 17, 1973, and May 24, 1973. It would be understandable if one had failed of delivery. It becomes remarkable if neither one was received and taxes the credibility at this point.
>
> "I find myself unable to accept the testimony that neither letter was received."

Appendix—pp. 239, 240

The Court of Appeals should not set aside the decision of the lower court. As the Second Circuit has previously stated:

> "and where, as here, there is a direct conflict in oral testimony, an appellate court should seldom if ever, substitute its judgment for that of the trial judge who saw the witnesses and credited one rather than anoher."
>
> *New York Trap Rock Corp.* v. *The Metropolitan No. 4, et al.*, 128 F. 2d 831 (2d Cir. 1942).

Rule 52(a) of the Federal Rules of Civil Procedure cautions that "findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." The finding by Judge Dooling that plaintiff received notice of the arbitration hearing is dispositive on that issue.

(It should also be noted that the lower court was not the only tribunal to find Maddaloni incredible—see the arbitrator's decision at Appendix—pp. 120, 121.)

Plaintiff's other contention that the Union had acted without his authority in submitting the matter to arbitration is also clearly disproven by the evidence.

> "Q. You indicate in your direct testimony that you had requested that an appeal be filed in your behalf. Is that right?
>
> A. Yes, sir.
>
> Q. And you knew that the Union had filed such appeal?
>
> A. Prior to the appeal being held?
>
> Q. Yes.
>
> A. Prior to the appeal being held, all I got was promises and I had no idea as to what was going on.
>
> Q. You had no idea that the Union had actually filed an appeal?

A. I never received any notice of it and I got one promise of it over the phone, as I said, I never got anything in the mail in answer to all those letters.

Q. I show you a letter, Mr. Maddaloni, dated April 17, 1973, and ask you whether that is your signature and whether you sent that letter?

A. Yes, sir.

Q. Would you read the P.S. to that letter?

A. 'Please give me a progress report as to how Marty is coming along with the neutral. How does it appear the outcome will be Approximately how long do you think it will take before we get the decision?' "

Appendix—pp. 225, 226

Obviously, Mr. Maddaloni knew of the submission of his case to arbitration by the Union and any present contention that the Union was unauthorized to represent him is merely a sham.

It should also be noted that Maddaloni was present at the Company trial and took no exception to Union representation.

Plaintiff draws the conclusion that the mere fact that the Court below did not grant summary judgment in favor of the Union is "ample evidence" of lack of due process. However, Judge Dooling indicated that there was very little evidence in favor of plaintiff:

> "That does not explain the failure of the Union or Mr. Greene or Mr. Mahoney to discuss strategy with the defendant and say to him frankly, you would be wise to stay away from the hearing and let us argue this on the cold record because if you were there you may be questioned and you may produce the same poor impression that you manifestly produced during the trial on the property.

> "But there is no suggestion that there was any such discussion of the case with the defendant.
>
> "Where does that leave the local in that he was the defendant in the discharge case between him and the road? I quite think the question here is, what is, if any, the legal consequences of that default on the part of the local. Where does it leave this total record for that is the only finding of fact that I can clearly make anything in favor of the plaintiff, that there was a failure to consult with him on strategy."

Appendix—p. 242

In fact, Judge Dooling found that the Union had prepared a very thoughtful brief on Maddaloni's behalf.

> "There is no indication that it sent a copy of the brief to Mr. Maddaloni, although the record shows that a respectable and thoughtful brief was submitted to the public law board on Mr. Maddaloni's behalf and one that the Union could quite unashamedly have sent to him."

Appendix—p. 237

Indeed, Mr. Maddaloni admits that he had talked a minimum of five times to the Union officers about his case (Appendix—p. 219).

Therefore, what is clear from the record is that this is a case of an employee who, after submitting his case to final and binding arbitration and receiving an unfavorable decision, has fabricated a claim in order to get another "bite at the apple." Judge Dooling properly recognized that the Railway Labor Act precludes such an action:

> "No, that is what the statute says shall not happen and that it means shall not happen."

Appendix—p. 246

The lower court allowed plaintiff to present his claim, and after reviewing the evidence, found plaintiff incredible.

The Court of Appeals should not retry issues of fact and substitute its judgment for that of the District Court. *Gruja* v. *United States Lines Co.*, 337 F. 2d 375 (2d Cir. 1964).

Conclusion

For the foregoing reasons, the judgment of the District Court should be affirmed and this appeal should be dismissed.

Respectfully submitted,

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UNITES STATES COURT OF APPEALS ::: FOR THE SECOND CIRCUIT

376—Affidavit of Service by Mail — The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

MADDALONI,

Plaintiff-appellant

v.

LONG ISLAND RAIL ROAD, et al

Defendants-Appellees

State of New York, County of New York, ss.:

Harold dudash, being duly sworn deposes and says that he is agent for George M. Onken the attorney for the above named Def-Appellees, LIRR & Walter Schlager herein. That he is over 21 years of age, is not a party to the action and resides at 2530 Young Avenue, Bronx, N.Y.

That on the 12th day of December, 1974, he served the within Brief for Appellees LIRR & Schlager

upon the attorneys for the parties and at the addresses as specified below

ALFRED F. KOLLER, JR. ; Attorney for the plaintiff-appellant, 845 Third Avenue, New York N.Y.

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directed to the said attorneys for the parties as listed above at the addresses aforementioned, that being the addresses within the state designated by them for that purpose, or the places where they then kept offices between which places there then was and now is a regular communication by mail.

Sworn to before me, this 12th day of december, 19 74

Roland W. Johnson

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1975